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August 31, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 21, 2005

Case Number: TSO-0233

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor in a position that requires her to maintain a security clearance. In March 2004, the individual was arrested for Driving While Intoxicated (DWI). Upon learning of this arrest, the local security office called the individual in for a Personnel Security Interview (PSI). Because the information obtained during this PSI did not resolve the security office's concerns, the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report setting forth the results of that evaluation and submitted it to the local security office.

Subsequently, the local security office reviewed the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Manager of that office informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization. The individual requested a

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An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

II. STATEMENT OF DEROGATORY INFORMATION

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Specifically, the Letter alleges that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse" (paragraph (j)), and that this is an "illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in [the individual's] judgment or reliability" (paragraph (h)).

As support for these claims, the Letter cites the DOE psychiatrist's report, in which she concludes that the individual suffers from Alcohol Abuse, in Early Full Remission, and that the individual was a user of alcohol habitually to excess until March 2004. The DOE psychiatrist also found that the individual's Alcohol Abuse is an illness or mental condition that causes, or may cause, a significant defect in her judgement or reliability. The Letter also refers to the individual's DWI arrest and to an assessment of the individual that was performed by a local facility after her employer referred her for evaluation because of her abnormally elevated liver enzymes. According to that assessment, the individual is "most likely" an abuser of alcohol. DOE Exhibit 14.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the

DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has made this showing, and that her clearance should therefore be restored.

IV. THE HEARING

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, through her own testimony and that of her domestic partner, her supervisor, a co-worker, a neighbor, and an Employee Assistance Program (EAP) Counselor, she attempted to demonstrate rehabilitation or reformation from alcohol abuse. The DOE psychiatrist testified for the DOE.

The individual’s domestic partner testified that she and the individual have been living together for approximately 17 years. Until approximately three years ago, she said, their pattern of alcohol consumption was to drink, between the two of them, a “12 pack” of beer on weekends, primarily on Sunday while watching football games. During the last few years, she added, their Sunday drinking has decreased to approximately six beers. Hearing Transcript (Tr.) at 11-12. In late 2003, spurred by a finding of elevated liver enzymes, the individual stopped drinking for a period of time. Tr. at 13. Eventually, she resumed her alcohol consumption and shortly thereafter was arrested for DWI in March 2004. After this arrest, the domestic partner continued, the individual decided to stop drinking permanently. Tr. at 15. Since then, the individual has told her that the individual’s life is better, she’s healthier, and she is less likely to make irrational decisions. Tr. at 15-16. The domestic partner further testified that the individual’s liver enzyme tests are back to normal, Individual’s Exhibit A, and that the two of them do not argue as much as they used to. Tr. at 16-17. Since the DWI, she has not seen the individual drink any alcoholic beverage, nor has she observed any signs of such usage. Tr. at 17-18. The domestic partner continues to drink periodically and keeps beer in the house, but said that she would know if the individual was “sneaking some of it,” and the individual has not done so. Tr. at 19. Her continued drinking will not entice the individual, she added, because the individual “can’t stand the smell of beer anymore.” *Id.*

The individual testified that when her elevated liver enzymes were detected in 2003, she was referred to a local EAP Counselor, who advised her to abstain from alcohol consumption for approximately 60 to 90 days. Tr. at 34. The individual did so, and in fact did not intend to start drinking again. Despite this intention, the individual resumed drinking approximately one week before her March 2004 DWI arrest. Tr. at 35. After that DWI, the individual again decided to

permanently refrain from further alcohol use. Tr. at 37. She testified that she had her last drink on the night of the DWI. Tr. at 63. At first, the individual had difficulty accepting the Alcohol Abuse diagnosis because she believed it to be synonymous with Alcoholism. Tr. at 37. However, after becoming educated about Alcohol Abuse and Alcohol Dependence and the differences between the two, she came to accept the validity of her diagnosis. *Id.*, Tr. at 52. The individual then discussed the counseling and therapy that she has received. She attended the EAP's Intensive Outpatient Program, which consisted of 20 three hour sessions over a five week period, and she continues to see her EAP counselor regularly. Tr. at 41, 50. She began by attending Alcoholics Anonymous (AA) meetings at least twice weekly, and submitting documentation of her attendance to her EAP counselor, and has now cut back to one meeting per week. Tr. at 43-44, 68. Although the individual initially had an AA sponsor, she dropped the sponsor after talking with her on the telephone one night and realizing that she had been drinking. After that, she said, she felt "real uncomfortable" about having another person from AA sponsor her because when she picks up the telephone to call her sponsor, she does not want to talk to an alcoholic, but rather to "somebody that I know who is not going to be having a drink." Tr. at 45, 59. Instead of a sponsor, the individual testified that her support group consists of two of her friends and her domestic partner. Tr. at 46. She also said that she could talk to her EAP Counselor or her family about any alcohol-related issues. Tr. at 47, 70. The individual further stated that although she attends the AA meetings, she is not working through their 12 step program. Tr. at 47-48. Instead, she goes to the meetings to educate herself about alcohol use disorders and to motivate herself to remain sober by listening to the experiences of other attendees. Tr. at 48. She concluded by saying that alcohol consumption was a problem for her, that her life is much better now that she is no longer drinking, and that she quit not only for employment-related reasons, but for herself as well. Tr. at 51-52.

One of the individual's co-workers, who is also part of her support group, then testified. She said that she has known the individual for approximately three years, and that they often eat lunch together. Tr. at 74, 76. The individual was "devastated" after her DWI arrest, she added, and concluded that she had to stop drinking permanently. Tr. at 76-77. She and the individual talk "every day" about remaining sober, and if the individual informed her that the individual's resolve to remain sober was weakening, she would say to the individual "Do you want to come over here or do you want me to come to you, because we're not going to do this and you're not going to do this [drink]." Tr. at 77. She concluded that she would be able to tell if the individual resumed drinking, and that the individual has been very honest and open with her about the subject of alcohol. Tr. 78-79.

The individual's neighbor testified that she sees the individual every day, talk about three times a week, and visit in each other's homes. Tr. at 86-87. After the DWI arrest, the neighbor posted bond for the individual, and drove her home from the local jail. During the drive home, she said,

the individual expressed her embarrassment about the arrest, and her realization that drinking is “just not worth it.” Tr. at 89. Prior to the DWI, the neighbor said, she would sit with the individual on the individual’s front porch “and drink a beer.” Tr. at 91. However, since the DWI, she has neither seen the individual drink any alcoholic beverage, nor detected any signs of such use. Prior to the DWI, she added, the individual and the domestic partner would argue “a lot,” often about the individual’s alcohol consumption. Tr. at 92-93. Now that the individual has stopped drinking, the neighbor hasn’t “seen them argue in a long time.” She then observed that the individual seems happier and more at peace since she stopped drinking. Tr. at 93.

The EAP counselor then testified. After the individual’s DWI, he said, he began meeting with the individual every three weeks for “individual therapy related to alcohol issues” and to monitor the progress of her rehabilitation. Tr. at 103. Because the counselor has become more confident in the individual’s ability to remain abstinent, the interval between meetings has increased from three weeks to six weeks. Tr. at 104. During these sessions, the two discuss childhood issues that might impact the individual’s alcohol use, the rehabilitative process in general, and skills for coping with stress and other factors that might lead to a relapse. Tr. at 104-105. When the counselor first began seeing the individual, he added, she “had some issues with defensiveness.” Tr. at 106. Although the counselor believes that she still “minimiz[es] . . . the impact of the alcohol use” to some degree, he added that she has made substantial progress in this area and now admits that her past drinking has been “a problem.” *Id.* The counselor’s belief as to the individual’s minimization stems from her continuing refusal to get a sponsor and to work AA’s 12 step program. Tr. at 107. Although the counselor expressed a preference that the individual obtain a sponsor, he opined that the individual’s current support system, consisting of her family and friends and the ongoing counseling sessions, serves largely the same purpose as a sponsor, and are adequate to discourage further alcohol use by the individual. Tr. at 129-130. The counselor concluded that she has made “good progress” in her rehabilitation, and that her chances of relapse are low. Tr. at 118, 123.

Finally, the DOE psychiatrist was called as a witness. She stated that she reviewed the individual’s personnel security file and medical records and then interviewed her. Tr. at 135, 140, 144. Based on the information obtained, and using the diagnostic standards set forth in the Diagnostic and Statistical Manual of Mental Disorders, Volume IV, she concluded that the individual suffered from Alcohol Abuse. Tr. at 145. The DOE psychiatrist further found that at the time of the examination, she was not exhibiting adequate evidence of reformation or rehabilitation. Tr. at 145-146. Specifically, the individual was not acknowledging that she had a drinking problem, and had only been abstinent and in counseling for approximately six months. DOE psychiatrist’s report at 15. In order to demonstrate adequate evidence of reformation or rehabilitation, the DOE psychiatrist stated in her report that the individual would have to either (i) continue with the treatment plan devised by the EAP (i.e., weekly documented AA attendance

with sponsorship, plus abstinence and regular sessions with her EAP counselor) for an additional six months, or (ii) remain abstinent from alcohol use for two years. DOE psychiatrist's report 15-16, Tr. at 148-149.

When asked at the hearing whether the individual was now demonstrating adequate evidence of rehabilitation or reformation, the DOE psychiatrist replied in the affirmative. Tr. at 149. She explained that although she has two concerns that were raised by the testimony at the hearing, those concerns are outweighed by several mitigating factors. The first concern is that, although the individual now accepts the diagnosis of Alcohol Abuse, she still continues to minimize the seriousness of her condition, as reflected in her refusal to obtain a sponsor and to work through AA's twelve step program. Tr. at 150. The DOE psychiatrist opined, however, that this minimalization is a defense mechanism that the individual used, likely in order to avoid facing "some real conflicts" inside of her. Her AA participation, the DOE psychiatrist added, "probably triggers a lot of . . . unresolved issues in the past." Tr. at 152. She further indicated that treatments for individuals vary, and that a patient should not be pushed "to get into the mold of what works for everybody." Tr. at 151, 152. The DOE psychiatrist also noted that, even without the sponsor, the individual "has a very good support system." Tr. at 152. The second concern expressed is that the individual's domestic partner continues to drink and keeps alcoholic beverages in the home. Tr. at 153.

The DOE psychiatrist found these concerns to be outweighed by several positive diagnostic factors. The first factor is that the diagnosis is Alcohol Abuse, not Alcohol Dependence. She explained that, unlike Alcohol Dependence, with Alcohol Abuse there is no "hard core" data that one treatment works better than others, or that a diagnosed Alcohol Abuser will always be an Alcohol Abuser. Tr. at 153. The second factor is the individual's continued abstinence and the third is that "she has made positive changes in her behavior, including the fact that she's probably taking care of her body better, she's lost weight and not abusing substances" Tr. at 155. The DOE psychiatrist concluded that the individual "has shown adequate reformation and probably adequate rehabilitation" from Alcohol Abuse. Tr. at 156.

V. ANALYSIS

After reviewing the testimony described above and the record in this matter as a whole, I agree with the DOE psychiatrist that the individual has demonstrated adequate reformation from Alcohol Abuse to alleviate the security concerns set forth in the Notification Letter. I share the concerns expressed by the EAP counselor and to a lesser extent, by the DOE psychiatrist, about the individual's refusal to obtain an AA sponsor and to work through the 12 step program. However, I cannot ignore what I found to be the most compelling aspect of the hearing: the

positive appraisals of the individual's recovery from Alcohol Abuse offered by both of the expert witnesses.

In making their decisions, hearing officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1997); *Personnel Security Hearing*, (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995); *Personnel Security Hearing*, (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995). As previously described, the EAP counselor testified that the individual has made good progress in her rehabilitation, and that her chances for a relapse are low. Tr. at 119. The DOE psychiatrist found the individual to have been reformed from Alcohol Abuse, and probably rehabilitated as well. Tr. at 156. Given her demonstrated period of abstinence, her strong support system and her desire to remain abstinent for personal, as well as professional, reasons, I believe that her chances of suffering a relapse are acceptably low for security purposes.

VI. CONCLUSION

Based on the factors discussed above, I find that the individual has shown reformation from Alcohol Abuse and has adequately addressed all of the security concerns set forth in the Notification Letter. I therefore find that the individual has demonstrated that restoring her clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's security clearance should be restored. The Office of Safeguards and Security may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: August 31, 2005